



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

NORFOLK & W. RY. Co. v. SIMMONS.

June 10, 1920.

[103 S. E. 609.]

1. Evidence (§ 588*)—Verdicts Contrary to Physical Facts Not Sustained.—Courts will not allow verdict to stand when they rest upon evidence which is contrary to physical facts and human experience and hence incredible.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 741.]

2. Evidence (§ 5 (2)*)—Courts Will Take Judicial Notice That Machinery Gets Out of Order.—That machinery gets out of order, becomes defective, and fails to operate, is a matter of common knowledge.

3. Evidence (§ 588*)—Testimony as to Inability to Stop Automobile Held Not Incredible.—Evidence that the driver of an automobile on approaching a crossing and becoming aware of a train “tramped” the clutch, but the machine continued to go forward, though he also applied the service brake and the emergency brake, held not incredible within the rule that a verdict based upon evidence contrary to physical facts and human experience will not be sustained.

4. Appeal and Error (§ 882 (8)*)—Objection to Admissibility of Evidence Unavailable to one Who Has Himself Elicited Same Facts.—An objection to the admissibility of evidence is unavailable to one who has himself elicited the same facts in the cause.

5. Trial (§ 260 (1)*)—Instructions Covered are Properly Refused.—Requested instructions as to matters sufficiently covered by the instructions given are properly refused.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

6. Trial, (§ 171*)—Instructions Violating Statute Forbidding Direction of Verdict Properly Refused.—Instructions, in action against a railroad company for damages in a collision violating a statute forbidding a trial court to direct a verdict, are properly refused.

7. Railroads (§ 368*)—Statute Prescribing Signals Mandatory.—The provisions of Code 1904, § 1294d, subsec. 24, prescribing signals by trains at highway crossings, are mandatory, and, when disobeyed and an accident happens as the proximate cause of such disobedience, the railroad cannot escape the imputation of negligence because some other signal was substituted.

8. Railroads (§ 327 (6)*)—Duty to Look and Listen Stated.—A traveler approaching a railroad crossing must both look and listen at such times and places as will make looking and listening reasonably effective in assuring him whether or not it is reasonably safe for him to proceed.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Railroads (§ 312 (3)*)—Statute Requiring Signals Sounded “Continuously” or “Alternately” Not Complied with by “Intermittent” Signal.—It is proper to refuse an instruction that signals be given intermittently until the crossing.

Error to Circuit Court, Botetourt County.

Action by R. S. Simmons against the Norfolk & Western Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Staples & Cocke, of Roanoke, for plaintiff in error.

Haden & Haden, of Fincastle, for defendant in error.

TALLEY *v.* COMMONWEALTH.

June 10, 1920.

[103 S. E. 612.]

1. Taxation (§ 93 (1)*)—Intangible Personal Property Taxable Only at Domicile.—Intangible personal property is not taxable, under Code 1904, §§ 491, 494, as amended by Acts 1915, c. 147, where the owner is not domiciled in the state.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 968.]

2. Domicile (§ 2*)—Not Equivalent of “Residence.”—“Domicile” and “residence” are not interchangeable words of the same or equivalent meaning, as a man can have but one domicile at one and the same time, but he may have several residences.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Domicile; Residence; Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 116; 4 Va.-W. Va. Enc. Dig. 781.]

3. Domicile (§ 4 (2)*)—Continues to Exist Until Another Is Acquired.—A domicile continues to exist until another is acquired elsewhere, and to effect a change of domicile there must be an actual abandonment of the old domicile, coupled with an intent not to return to it, and also a new domicile acquired at another place, which can only be done with a union of intent and personal presence.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 116; 4 Va.-W. Va. Enc. Dig. 781.]

4. Domicile (§ 11*)—Existence a Mixed Question of Law and Fact.—The existence or nonexistence of a domicile in a given locality is a mixed question of law and fact.

5. Taxation (§ 500*)—Burden on State to Show Change of Domicile from Another State.—In a proceeding to have an assessment of intangible personal property adjudged illegal and void, where it was shown that the deceased owner had abandoned her domicile in the

*For other cases see same topic and KEY-NUMBER in all Key-numbered Digests and Indexes.